

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MELVIN ANTONIO XAVIER,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 3:24-cv-05464-JHC-GJL

ORDER SUBSTITUTING
RESPONDENT AND FOR
SERVICE AND ANSWER, § 2254
PETITION

This is a federal habeas action filed under 28 U.S.C. § 2254. Petitioner Melvin Antonio Xavier is currently incarcerated at Washington State Penitentiary (“WSP”) and is subject to the Court’s Prisoner E-Filing Initiative pursuant to General Order 06-16. The Court, having reviewed Petitioner’s federal habeas Petition, hereby finds and **ORDERS** as follows:

(1) Substitute Proper Respondent

Petitioner named the State of Washington as Respondent. Dkt. 1-1, 3-2. However, the proper respondent to a habeas petition is the “person who has custody over [the petitioner].” 28 U.S.C. § 2242; *see also* § 2243; *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). The Superintendent of WSP, where

Petitioner is currently confined, is Robert Jackson. Accordingly, the Clerk of Court is **DIRECTED** to substitute Robert Jackson as the Respondent in this action and to update the case title.

(2) Service and Answer

The Clerk shall arrange for service, by e-mail upon Respondent and upon the Attorney General of the State of Washington, of copies of: the Petition, any other documents filed in support of the Petition, and this Order. The Clerk shall also direct a copy of this Order and of the Court's *pro se* instruction sheet to Petitioner.

Within ***forty-five (45) days*** after such service, Respondent shall file and serve an answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District Courts. As part of such answer, Respondent shall state whether Petitioner has exhausted available state remedies and whether an evidentiary hearing is necessary. Respondent shall not file a dispositive motion in place of an answer without first showing cause as to why an answer is inadequate. Respondent shall file the answer with the Clerk of the Court and serve a copy of the answer on Petitioner.

The answer will be treated in accordance with LCR 7. Accordingly, on the face of the answer, Respondent shall note it for consideration no earlier than 28 days after filing. Petitioner may file and serve a response not later than 21 days after the filing date of the answer, and Respondent may file and serve a reply not later than 28 days after the filing date of the answer.

(3) Filing by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Petitioner shall file all documents electronically.

1 All filings must indicate in the upper right-hand corner the name of the United States Magistrate
2 Judge to whom the document is directed.

3 Any document filed with the Court must be accompanied by proof that it has been served
4 upon all parties that have entered a notice of appearance in the underlying matter. Petitioner shall
5 indicate the date the document is submitted for e-filing as the date of service.

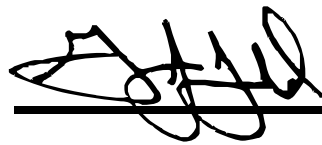
6 (5) Motions

7 Any request for court action shall be set forth in a motion, properly filed and served.
8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
9 part of the motion itself and not in a separate document. The motion shall include in its caption
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for
11 consideration on the Court's motion calendar.

12 (6) Direct Communications with District Judge or Magistrate Judge

13 No direct communication is to take place with the District Judge or Magistrate Judge with
14 regard to this case. All relevant information and papers are to be directed to the Clerk.

15 Dated this 12th day of July, 2024.

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18 Grady J. Leupold
19 United States Magistrate Judge
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